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GOVERNMENTAL INQUIRY
UNIT

Opinion Committee

September 8, 1997

FILE # ML-3972-97
I.D. # 39772

The Honorable Dan Morales,
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General's Opinion

Dear Attorney General Morales,

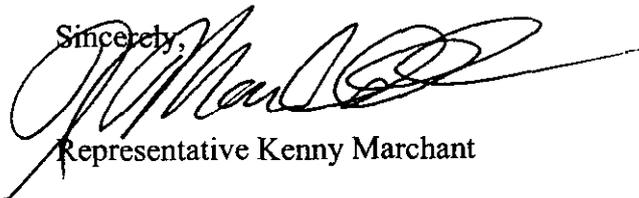
As Chairman of the House Committee on Financial Institutions, I request your opinion regarding the kinds of activities that lenders and potential borrowers may undertake in anticipation of the passage and effective date of HJR 31, the proposed amendment to the Texas Constitution that will, if passed following the November 4, 1997 referendum, permit home equity lending in Texas. Specifically, may a lender commence the solicitation of applications for home equity loans prior to the November 4, 1997 referendum, provided that the lender clearly and conspicuously discloses that the equity loan will not be available if a majority of the electorate does not vote in favor of the constitutional amendment? If not, may such solicitations commence after the November 4 referendum (assuming passage), but prior to the effective date of the amendment, January 1, 1998? May a lender accept an application for an equity loan and provide written notice required under HJR 31 prior to November 4, 1997 (again, assuming it is clearly and conspicuously disclosed to the borrower that the lender's obligation and ability to provide the equity loan is conditioned upon passage of the proposed amendment), so that the 12 day "cooling off" period required under the resolution will have lapsed by the effective date of the proposed amendment? This would permit closing on the home equity loan as early as January 1, 1998 (if the lending institution is open that day). If not, may the application be accepted and the written notice be given after November 4, 1997 (assuming passage of the proposed amendment), but prior to January 1, 1998, again so as to permit the cooling-off period to run and closing of home equity loans to occur as early as the effective date of the amendment.

Your expeditious attention to this matter is urgently requested. As you are aware, Texas homeowners have long been denied the opportunity to access the equity in their homestead property. If the proposed amendment is passed, there appears to be no public policy rationale for effectively further delaying the availability of home equity loans beyond the effective date of the amendment. To enjoin lenders from conditionally offering these products to their customers so that they may commence underwriting loan requests between now and the effective date of the proposed amendment only further delays the homeowners ability to access the equity in their homes that some may need on an emergency basis. Similarly, if your office fails to issue an opinion on these points, lenders will be faced with the decision of, on the one hand, proceeding cautiously and suffering a significant competitive disadvantage if more aggressive lending institutions elect to proceed with home equity solicitation programs without the benefit of your office's opinion in order to "corner the market", or, on the other hand, acting at their peril, closing equity loans on the effective date of the amendment, only to discover later that the lien that presumably secured their loan is invalid because all the components of the lending process did not take place after the effective date of the amendment.

In addition, without the benefit of your opinion, lenders face the added uncertainty of whether the borrower is liable for the debt created by a home equity loan closed after the effective date of the amendment, given that HJR 31 requires equity loans be non-recourse and the borrower be notified of the non-recourse nature of these loans prior to closing. I am concerned that the lending institutions that will suffer the most from this lack of guidance from your office will be the smaller local institutions that lack the capital base to risk the uncertainty of their lienholders status and enforceability of the underlying note.

If you have any questions or need any assistance, please contact my Capitol office at 463-0468.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenny Marchant", written over the word "Sincerely,".

Representative Kenny Marchant